

**THE AUTHORITY ON ADVANCE RULINGS
IN KARNATAKA
GOODS AND SERVICES TAX
VANIJYA THERIGE KARYALAYA, KALIDASA ROAD
GANDHINAGAR, BENGALURU - 560009**

**Advance Ruling No. KAR ADRG 110/2019
Date: 30-09-2019**

Present:

1. Sri. Harish Dharnia,
Additional Commissioner of Central Tax Member (Central Tax)
2. Dr. Ravi Prasad M.P.
Joint Commissioner of Commercial Taxes Member (State Tax)

1.	Name and address of the applicant	M/s Krish Biotech Research Pvt. Ltd., 10th Main Road, Akkiyappa Garden, Mohan Kumar Nagar, Bangalore - 560022
2.	GSTIN or User ID	291900000133ART
3.	Date of filing of Form GST ARA-01	22.07.2019
4.	Represented by	Jayesh Gupta, Chartered Accountant
5.	Jurisdictional Authority - Centre	The Commissioner of Central Tax, Bangalore North West Commissionerate, Shivaji Nagar, Bengaluru.
6.	Jurisdictional Authority - State	LGSTO-050, Bengaluru
7.	Whether the payment of fees discharged and if yes, the amount and CIN	Yes, discharged fee of Rs.5,000/- each under CGST / KGST Act 2017 vide CIN CPIN ICICI19072900013248 dated 04.07.2019.

**ORDER UNDER SECTION 98(4) OF THE CGST ACT, 2017
& UNDER SECTION 98(4) OF THE KGST ACT, 2017**

1. M/s Krish Biotech Research Private Limited., (called as the 'Applicant / KBRPL' hereinafter), have filed an application for Advance Ruling under Section 97 of the CGST / KGST Act, 2017, in form GST ARA-01, discharging the fee of Rs.5,000/- each under the CGST Act & the KGST Act.

2. The Applicant is a Private Limited Company and is not registered under the Goods and Services Act, 2017. The applicant company has sought advance ruling in respect of the following question:



1. Whether the activity of technical testing and analysis carried out by KBRPL is liable to Goods and Services Tax under the provisions of Central Goods and Services Tax Act, 2017 read with Karnataka Goods and Service Tax Act, 2017, the Rules framed thereunder and Notifications issued from time to time.
2. Where the material for testing and analysis is sent from outside India to KBRPL and on which KBRPL carries out testing and analysis and issues certificate based thereon to the person not residing in India, whether it can be said that there is no supply by KBRPL involved in terms of Section 7 Central Goods and Services Tax Act, 2017 read with Karnataka Goods and Service Tax Act, 2017, the Rules framed thereunder and Notifications issued from time to time.
3. Where the customer providing the material is not residing in India and sends material from outside India to KBRPL in India, for carrying out testing and analysis and issuance of certificate thereafter, such an activity if held to be supply in terms of Section 7 of the Central Goods and Services Tax Act, 2017 read with Karnataka Goods and Service Tax Act, 2017, the Rules framed thereunder and Notifications issued from time to time, and where payments are received in convertible foreign currency, whether Invoice in terms of Section 31 of the Central Goods and Services Tax Act, 2017 read with Karnataka Goods and Service Tax Act, 2017, the Rules framed thereunder and Notifications issued from time to time, can be issued without charging Goods and Services Tax therein.
4. Whether the services of technical testing and analysis provided by KBRPL to customers located outside India can be regarded as export of services as per section 2(6) of the Integrated Goods and Services Tax, 2017?

3. The applicant furnishes some facts relevant to the stated activity:

3.1 The applicant is registered under Companies Act, 1956 as amended by Companies Act, 2013. Its registered office is located at 29, Lala Lajpat Rai Sarani, Kolkata-700020 and is having an office at Bangalore at 10th Main Road, Akkiyappa Garden, Mohan Kumar Nagar, Bangalore-560022, Karnataka from where it proposes to commence business of technical testing and analysis services of chemicals, as detailed hereunder. Its turnover for financial year 2018-19 has been Rs.13,65,34,324/-.

3.2 The customers to whom such service is proposed to be provided may either be located in India or outside India. KBRPL has a standard practice to execute an agreement with the customer(s) and has provided a sample standard agreement.

3.3 The customer makes available some quantity of material (hereinafter referred to as "test item") on which testing and analysis will be carried out. Additionally, the customer shall also provide material safety data sheet, Certificate of Analysis and Test item data sheet.



3.4 Material safety data sheet contains the preventive measures of test item such as precautionary measures, first aid measures, fire-fighting measures, handling and storage, disposal mechanism etc., of the test item to be taken into consideration while conducting the technical testing and analysis.

3.5 Certificate of Analysis contains the chemical composition of the test item, details regarding date of preparation and date of expiry of test item, conditions of storage, quantity of test item supplied by the customer. Test item data sheet is a form which is uniformly circulated to all customers by KBRPL which is required to be filled by them. Certificate of Analysis and Material Safety Data sheet is to be submitted to KBRPL along with the Test item data sheet. This form contains the details of manufacturer of test item, storage condition and location of the test item, physio-chemical properties, toxicity data details, etc. of the test item.

3.6 As per clause 9 of the terms and conditions of the standard agreement, some quantity of test item and data fact sheet of the material in the form of material safety data sheet, Certificate of Analysis and Test item data sheet will be provided by the customer to KBRL. KBRPL will then prepare a draft study plan which contains the process to be followed for testing and analysis of test item. The draft study plan will include the treatment of test item, parameters of observation, recording and data compilation, reporting of technical testing, etc. This draft plan will then be sent to customers for approval. Once the draft study plan is approved, it will be signed by both the parties which will be known as final study plan. KBRPL will then initiate technical testing and analysis on the test item for preparing a study report.

3.7 During the process of technical testing, the test items as provided by the customers are consumed. In other words, the test items are utilized for preparing the study report after completion of technical testing, since consumed are not returned. A draft of study report will be sent to customers for approval. Once the same is approved, the final study report will be delivered in electronic form. If the same is required by customer in printed form then it will also be delivered in printed form.

3.8 As per clause 1 of the terms and conditions of the standard agreement, invoicing for such services generally occurs in the following manner, unless otherwise specified:

1. 40% of the contract value on confirmation of contract.
2. 30% of the contract value after signing of study plan.
3. Balance 30% of the contract value after submission of draft report.

4. The applicant submits his understanding on the questions posed for ruling and the same reads as under:



4.1 On the first question "Whether the activity of technical testing and analysis carried out by the applicant is liable to Goods and Services Tax under the provisions of CGST Act and KGST Act" the applicant states as under:

- (a) As per section 7(a) of the CGST Act, 2017, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- (b) The term services is defined in section 2(102) of the CGST Act as follows:-
"Services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged."
- (c) The term "goods" is defined in section 2(52) of the CGST Act as follows:-
"Goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply."
- (d) From the above provisions, the applicant submits that a view may be taken that the activity of KBRPL in the nature of technical testing and analysis is in the nature of supply of services where the consideration will be received in monetary form.

4.2 On the second question "Where the material for testing and analysis is sent from outside India to the applicant and on which the applicant carries out testing and analysis and issues certificate based thereon to the person not residing in India, whether it can be said that there is no supply by KBRPL involved in terms of Section 7 of the CGST Act read with KGST Act, 2017", the applicant submits as under:

- (a) The activity of technical testing and analysis provided by KBRPL may be considered as supply as:-
 - (i) There is a service involved which is provided by KBRPL to its overseas customers in the form of technical testing;
 - (ii) There is consideration involved which will be paid by the overseas customer in convertible foreign currency.

4.3 On the third question "Where the customer providing the material is not residing in India and sends material from outside India to the applicant in India, for carrying out testing and analysis and issuance of certificate thereafter, such an activity if held to be supply in terms of Section 7 of the CGST Act read with KGST Act, 2017, and where payments are received in convertible foreign currency,

whether Invoice in terms of Section 31 of the CGST Act read with KGST Act, 2017, can be issued without charging Goods and Services Tax therein?" the applicant submits as under:

- (a) The activity of technical testing and analysis carried out by the applicant is likely to be a supply of service. The consideration in respect of the above supply of services provided to overseas customers will be received by the applicant in convertible foreign currency. To determine whether invoice in terms of Section 31 of the CGST Act can be issued to overseas customers in respect of supply of aforesaid services without charging Goods and Services Tax, the supply of service needs to be classified as exempted under notification no. 12/2017- Central Tax (Rate) dated 28.06.2017 issued under Section 11(1) of the CGST Act, 2017;
- (b) The supply of service of technical testing and analysis is not specified as exempted under the above-mentioned notification. So, it may not be treated as exempted and therefore, invoice in terms of Section 31 of the CGST Act may not be issued to overseas customers without charging Goods and Services Tax.

4.4 Regarding the fourth question "Whether the services of technical testing and analysis provided by the applicant to customers located outside India can be regarded as export of services as per section 2(6) of the Integrated Goods and Services Tax, 2017?" the applicant states that -

(a) As per section 2(6) of the Integrated Goods and Services Tax, 2017 (hereinafter referred to as the IGST Act),

"Export of services" means the supply of any service when,—

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*
- (iii) the place of supply of service is outside India;*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"*

(b) As per the above definition of export of services, it is imperative to satisfy all the conditions as given above. If any of the above conditions are not met, the activity cannot be treated as export.

PERSONAL HEARING: / PROCEEDINGS HELD ON 22.07.2019

5. Sri Jayesh Gupta, CA., authorized representatives of the applicant appeared for personal hearing proceedings held on 22.07.2019 & reiterated the facts narrated in their application.



6. FINDINGS & DISCUSSION:

6.1 We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made by Sri Jayesh Guptha, CA., authorized representatives, during personal hearing. We have also considered the issues involved, on which advance ruling is sought by the applicant, and relevant facts.

6.2 Regarding the first question whether the activity of the applicant in testing and analysis is liable to GST, the activity of the applicant is examined and found that the applicant is supplying services and the same is covered under the definition of "supply" as envisaged in Section 7(1) of the CGST Act and KGST Act and there is a supply of services for consideration in the course or furtherance of business.

6.3 Regarding the second question, since the activity of the applicant is treated as a "supply" it is immaterial from where the applicant is receiving goods and to whom he is supplying the services and in what form the consideration is received, so long as there is a supply of services and he receives consideration for the same and that supply is in the course or in furtherance of business. Hence the services provided by the applicant by receiving the goods from outside India and sending the report outside India is a "supply" of services.

6.4 Regarding the third issue, it is clear from section 31(2) of the CGST Act, 2017 that a registered person supplying a taxable service shall issue a tax invoice, unless exempted by the Government by notification. Hence the applicant is required to issue an Invoice as required under section 31(2) of the CGST Act for the supplies made.

6.5 In respect of the fourth question, the applicant is receiving the goods for testing and analysis. The "export of services" is defined in clause (6) of section 2 of the IGST Act and reads as under:

"Export of services" means the supply of any service when,—

- (i) the supplier of service is located in India;*
- (ii) the recipient of service is located outside India;*
- (iii) the place of supply of service is outside India;*
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;"*

The applicant is located in India and the recipient of services is located outside India. The payment or consideration for the supply of services is received in the convertible foreign exchange and the applicant and the recipient of services are not mere establishments of a distinct person in accordance with Explanation 1 in Section 8 of the IGST Act.

Krishna Biotech research



6.6 To determine the whether the transaction is an "export of services" the issue of place of supply must be determined and this authority is not authorised to decide on the issue of place of supply and hence no ruling is given on this account.

7. In view of the foregoing, we pass the following

RULING

1. The activity of technical testing and analysis carried out by the applicant is a "supply of services" under the GST Acts.
2. The activity of technical testing and analysis carried out by the applicant for consideration and supplied to a person outside India is also a "supply of service" under the GST Act.
3. The applicant is required to issue a tax invoice for the supply of service made even when the recipient of such supply is a person located outside India and the consideration is received in convertible foreign exchange.
4. No advance ruling is given determining whether the transaction is an "export of services" as the same involves the determination of place of supply.



(Signature)
30.09.2019
(Harish Dharnia)
Member

(Signature)
(Dr. Ravi Prasad M.P.)
Member

Place: Bengaluru,

Date: 30.09.2019

To,

The Applicant

Copy to:

1. The Principal Chief Commissioner of Central Tax, Bangalore Zone, Karnataka.
2. The Commissioner of Commercial Taxes, Karnataka, Bengaluru.
3. The Commissioner of Central Tax, Bangalore North West Commissionerate, Bengaluru.
4. The Asst. Commissioner, LGSTO -50, Bengaluru.
5. Office Folder